

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7226 OF 2003

ANIS AHMED SHAIKH

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PETITIONER

Vs.

VIKAR AHMED KADIRI

..

RESPONDENT

Mr. Shujauddin for petitioner

CORAM:-SMT. RANJANA DESAI, J.

DATED:-21-3-2005

P.C.

The petitioner is original plaintiff. The petitioner filed a suit against the defendant for a declaration that the defendant has no right to evict him and that he should not be obstructed from carrying out his business. The petitioner also prayed for injunction.

2. According to the petitioner/plaintiff he took suit premises i.e. open plot of

land from one Bhamabai in the year 1985. Thereafter he erected a shed on the plot and started doing business in the said shed in 1991. The defendant represented to him that he is the owner of the plot and demanded rent from him at Rs.125/- per month and, therefore, he started paying him rent from 1996. He is thus the tenant of the defendant.

3. The defendant's case is that the defendant had taken the suit premises from one Sarubai Waghire and was running business of repairing stoves and gas cylinders. He has a Shop Act Licence since 10/11/81. On or about 6/7/96 because of old age, he decided to run the business by appointing a servant. The plaintiff approached him as he was in need of a job. He, therefore, executed a Naukarnama on 6/7/96 and appointed the plaintiff as servant. The plaintiff thereafter showed his colour. He is trying to usurp the property by claiming to be a tenant. The trial court dismissed the suit. The appeal filed by the plaintiff was also dismissed and hence this writ petition.

4. I have heard at some length the learned counsel appearing for the petitioner. He contended that the finding of fact returned by the courts below is perverse calling for interference by this court. I am unable to agree with him.

5. The case of the plaintiff that he took the suit premises i.e. open plot on rent from one Bhamabai in the year 1985 is not substantiated. He

has not produced any rent receipts to show that any rent was ever paid by him to the said Bhamabai. His shop and establishment licence is of the year 1996. The plaintiff has relied upon certain rent receipts. It appears that because genuineness of the said rent receipts was challenged, the trial court sent the said rent receipts to the handwriting expert and the report of handwriting expert states that the rent receipts are not signed by the defendant. Therefore, they are forged rent receipts.

6.The learned counsel urged that the handwriting expert's evidence is not substantive evidence and cannot be relied upon. The handwriting experts evidence is one of the many circumstances which indicate that the plaintiff has come to the court with a false case. The courts below have not relied only on the handwriting expert report. The naukarnama which is on record indicates that the plaintiff was an employee of the defendant. The evidence of the defendant indicates that he agreed to pay Rs.500/- per month to the plaintiff as salary and he paid salary of six months to the plaintiff vide receipt Exhibit 53. To get over this the plaintiff took up a contention that the defendant obtained his signature on Exhibit 53 i.e. Naukarnama Exhibit 52 which is a receipt by misrepresentation. This stand of the plaintiff has rightly been rejected by the courts below.

7.In my opinion the finding of fact recorded by the courts below is unassailable. This is not a case where any interference is called for with

the judgments of the courts below in my writ jurisdiction. Hence the petition is dismissed.

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